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# Supreme Court of the United States.

OCTOBER TERM, 1905.

No. 360.

W. H. CARPER, Sheriff of Wood County, West Virginia,
*Appellant,*
*vs.*
C. T. CALDWELL.

**Appeal from the Circuit Court of the United States for the Northern District of West Virginia.**

## BRIEF FOR THE APPELLANT.

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### STATEMENT OF THE CASE.

This is an appeal from a final order of the circuit court in a proceeding in habeas corpus brought therein by the appellee Caldwell, discharging him from custody. The appeal is on the sole ground that the circuit court was without jurisdiction, as a court of the United States, to issue the writ or discharge the petitioner. The question of jurisdiction is duly certified (Rec. 31), in accordance with the practice approved in Shields vs. Coleman, 157 U. S. 168.

The case was heard in the circuit court on the petition for the writ, the return, and the exhibits attached to said pleadings (Rec. 19). They disclose the following facts.

On February 24, 1905, at the regular biennial session of the legislature of West Virginia, the House of Delegates duly passed a resolution instructing the speaker of the House to appoint a committee of three members "to investigate fully and thoroughly" certain charges and matters set forth in the resolution. The committee was directed by the resolution to meet as soon as practicable and select one of its members chairman and was given leave to sit after the adjournment of the session. The resolution empowered the committee "to compel the attendance of witnesses and to send for persons and papers, to appoint a sergeant-at-arms, necessary stenographers and clerks, and to employ such counsel as may be necessary to conduct said investigation." A copy of the resolution and a certificate of the appointment of the committee by the speaker is attached to the return. Rec. 8.

The committee organized and duly summoned the appellee Caldwell to appear before them "to testify and the truth to speak of and concerning the matters and things in said resolution to be inquired of." Rec. 11. He refused to appear and was taken into custody by the appellant, the sheriff of Wood County, in pursuance of an order of attachment issued by the committee to bring him before them to answer for his contempt in failing to attend and testify. Rec. 13. He was taken from the custody of the sheriff by the writ of habeas corpus in this case and discharged.

The petition for the writ did not allege and the court in discharging the petitioner did not find that he was held in violation of the Constitution or of any law or treaty of the United States. Nothing appeared to justify the exercise of federal authority, but the objection made on that ground to the jurisdiction of the court, as a court of the United States,

was overruled, and the petitioner discharged, because the circuit court was of opinion that the house of delegates had no power *under the Constitution of West Virginia*, to appoint a committee for the purpose of investigating the matters set forth in its resolution and to clothe it with power to sit and compel the attendance of witnesses in vacation. Opinion, Rec. 27. The objection that this view of the limitations imposed by the Constitution of West Virginia, if correct, did not justify a *federal* court in interfering, was answered by the statement of the court that the condition was so "extraordinary" as to "warrant the intervention of the first court, state or federal, applied to." Rec. 22. The full view of the court upon this point is set forth in the following passage from the opinion, Rec. 21, 22:

"Briefly stated, here is a citizen of the United States, resident within the jurisdiction of this court, who says that he is deprived of his liberty, not by 'due process of law,' not by any court of competent jurisdiction, State or Federal, but by a pretended writ of attachment and arrest issued by another citizen claiming to be chairman of a committee, constituted by a single house of the legislative branch of the state, sitting without power or authority, after the power of such house itself by reason of its adjournment, under the constitution of the State, had ceased or was in abeyance, seeking to investigate, and to require him to testify touching matters that the legislature could not itself or through any committee constituted by it inquire into, but which matters were peculiarly within the province of the judicial power of the State under its well ordered criminal laws to examine and decide upon.

If these things be true, is it not such an extraordinary condition of affairs, as would warrant the intervention of the first court, State or Federal, applied to? Need there be any hesitation about acting because of forbearance due the state courts when their action is not only not involved, but their authority is actually usurped by another and distinct department of government contrary to the express inhibition of the

state constitution under which both of them must act? Is not the 'free doom' of every citizen under the law as dear and as precious to the American to-day as it was to the Saxon of old? Is his enjoyment of it to be jeopardized for a day by the unwarranted and vexatious action of private citizens acting under a wholly unwarranted and usurped power, not of a judicial but of a legislative body?

We think there can be but one answer. If these allegations be true it is not only the exercise of a sound discretion but an imperative duty for this court thus appealed to, to intervene for both the protection of the citizens' right, and the maintenance of the power and jurisdiction of the judiciary, Federal and State, to enforce, as constitutionally required of it, without interruption, the laws which it is the sole power of the legislative branch of government to enact."

## ARGUMENT.

### I.

The federal courts have no authority to discharge a person held for contempt by a committee of the legislature of a state, acting in pursuance of a law of the state and a resolution passed by a branch of the legislature, on the ground that such law and resolution are repugnant to the Constitution of the State.

In In re Burrus, 136 U. S. 586, the jurisdiction of the federal courts to issue writs of habeas corpus was carefully considered upon principle and authority, and the conclusion of the court thus stated by Mr. Justice Miller, at page 591:

"It is sufficient to say that the net result of the discussion is, that all the courts of the United States, and the justices and judges of all its courts, are authorized to issue the writ of habeas corpus in any case where a party is imprisoned or held in custody for an act done by or under the authority of the laws of the United States, or where his imprisonment is in violation of the Constitution of the United States, or where it is supposed to be in violation of the law of nations or of the United States, in all which cases the federal courts and

judges have jurisdiction to make inquiry into the matter, and, in the language of the statute, when the prisoner is brought before them and the matter is inquired into, the court or justice or judge shall 'dispose of the party as law and justice require.' It is not now the law, therefore, and never was, that every person held in unlawful imprisonment has a right to invoke the aid of the courts of the United States for his release by the writ of habeas corpus. In order to obtain the benefit of this writ and to procure its being issued by the court or justice or judge who has a right to order its issue, it should be made to appear, upon the application for the writ, that it is founded upon some matter which justifies the exercise of federal authority, and which is necessary to the enforcement of rights under the Constitution, laws or treaties of the United States."

Burrus's case involved the jurisdiction of a district court of the United States over a proceeding in habeas corpus brought by the father of a child to recover its custody from its grandfather, Burrus. Burrus was imprisoned by the district court for refusing to obey an order directing him to deliver the child to the father. This court discharged him on habeas corpus, holding that the district court was without jurisdiction, Mr. Justice Miller saying at page 593:

"In the case before us there was no pretence that the child was restrained of its liberty, or that the grandfather withheld it from the possession and control of the father, under or by virtue of any authority of the United States, or that his possession of the child was in violation of the Constitution or any law or treaty of the United States. The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states and not to the laws of the United States. As to the right to the control and possession of this child, as it is contested by its father and its grandfather, it is one in regard to which neither the Congress of the United States nor any authority of the United States has any special jurisdiction. Whether the one or the other is entitled to the possession does not depend upon any act of Congress, or any treaty of the United States or its Constitution."

In Andrews vs. Swartz, 156 U. S. 272, 275, Mr. Justice Harlan said:

"The repugnancy of a statute to the constitution of the State by whose legislature it was enacted can not authorize a writ of habeas corpus from a court of the United States, unless the petitioner is in custody by virtue of such statute, and unless also the statute is in conflict with the Constitution of the United States."

In Storti vs. Massachusetts, 183 U. S. 138, 142, Mr. Justice Brewer said:

"It must be borne in mind that under section 763 of Rev. Stat. the jurisdiction of the Federal court to issue a writ of habeas corpus is limited to 'the case of any person alleged to be restrained of his liberty in violation of the Constitution, or of any law or treaty of the United States,' and to cases arising under the laws of nations.

With these considerations in mind we pass to notice more particularly the matters set forth in the petition. It is stated that the petitioner was sentenced to be put to death at a given time; that he was not then put to death on account of a respite granted by the governor, and that such respite was unlawfully granted. Wherein the unlawfulness consisted is not stated, and whether it were lawful or not is a matter dependent on the laws of the State, and to be determined by its courts. The Federal Constitution neither grants nor forbids to the governor of a State the right to stay the execution of a sentence. So also it is said that under the Massachusetts statutes the party convicted has a year in which to file a motion for a new trial, and, therefore, no sentence can be executed on him until that time. Whether that be so or not is also a question depending on the statutes of the State, and to be determined by its courts. The State may see fit to postpone the execution of a capital sentence for a year, or provide that it shall be carried into effect more speedily, and what the State has provided in the matter is for its courts to decide."

The decision of the circuit court is based on the erroneous assumption that the power of the federal courts to issue writs

of habeas corpus "is co-extensive with the common law power provided only that it be not used for the deliverance of a prisoner in jail except in the cases specified in section 753 of the Revised Statutes of the United States," Opinion, Rec. 20.

## II.

The circuit court was of opinion that the subject which the committee was appointed to investigate was not within the jurisdiction of the legislature, *as defined by article 5 of the constitution of West Virginia*, which declares that "the legislative, executive and judicial departments shall be separate and distinct, so that neither shall exercise the power properly belonging to either of the others." But the committee was acting under a resolution duly passed by the House of Delegates, and in pursuance of a law of the State, giving power to committees of either house, authorized to sit during recess, to enforce obedience to summonses issued by them; and if they did not have the power which they assumed to exercise, it was because the resolution or law or both were repugnant to the Constitution of the *State*, and not because they were in conflict with the Constitution or any law or treaty of the United States.

In Dreyer vs. Illinois, 187 U. S. 71, 83, 84, Mr. Justice Harlan said:

"A local statute investing a collection of persons not of the judicial department, with powers that are judicial and authorizing them to exercise the pardoning power which alone belongs to the Governor of the State, presents no question under the Constitution of the United States. The right to the due process of law prescribed by the Fourteenth Amendment would not be infringed by a local statute of that character. Whether the legislative, executive and judicial powers of a State shall be kept altogether distinct and separate, or whether persons or collections of persons belonging to one department may, in respect to some matters, exert

powers which, strictly speaking, pertain to another department of government, is for the determination of the State. And its determination one way or the other can not be an element in the inquiry whether the due process of law prescribed by the Fourteenth Amendment has been respected by the State or its representatives when dealing with matters involving life or liberty. 'When we speak,' said Story, 'of a separation of the three great departments of government, and maintain that that separation is indispensable to public liberty, we are to understand this maxim in a limited sense. It is not meant to affirm that they must be kept wholly and entirely separate and distinct, and have no common link of connection or dependence the one upon the other, in the slightest degree. The true meaning is, that the whole power of one of these departments should not be exercised by the same hands which possess the whole power of either of the other departments; and that such exercise of the whole would subvert the principles of a free constitution.' Story's Const. (5th ed.) 393. Again: 'Indeed, there is not a single constitution of any State in the Union, which does not practically embrace some acknowledgement of the maxim, and at the same time some admixture of powers constituting an exception to it.' Story's Const. (5th ed.) 395.

The objection that the act of 1899 confers upon executive or ministerial officers powers of a judicial nature does not, in our judgment, present any question under the due-process clause of the Fourteenth Amendment."

Dreyer vs. Illinois was approved in Reetz vs. Michigan, 188 U. S. 505.

In Kilbourn vs. Thompson, 103 U. S. 168, greatly relied on by the circuit court, the House of Representatives was held to have exceeded its authority under the Constitution of the United States, to which it owed its existence and from which it derived its powers. It was a case depending wholly and only upon the Federal Constitution.

There is nothing in the Constitution of the United States to prevent the State of West Virginia from conferring upon a committee of the House of Delegates the very power which

this committee assumed to exercise when they summoned Caldwell to appear before them and testify. Whether they had the power to make the proposed investigation and to require Caldwell to give evidence and to punish him for refusing to appear, depends wholly upon the construction of the resolution by which they were appointed, the validity of that resolution under the Constitution of West Virginia, and the construction and validity of the statute of the state authorizing them to punish for contempt, and not at all upon the Constitution or laws of the United States. There is no way in which Caldwell's case can be viewed that brings it within the domain of the federal law. It does not arise under the Constitution and laws of the United States. His petition for the writ asserts no ground under the Federal Constitution.

The following is the statute of West Virginia under which the committee acted in committing Caldwell for contempt. It was taken from a statute of Virginia, which remained in the Code of that State from 1819 until West Virginia was formed, being carried into the Code of 1868 of West Virginia, and put into its present form by the Acts of 1882, chapter 88. It is section 7 of chapter 12 of the present Code of West Virginia.

"When the senate or house of delegates, or a committee of either house, authorized to examine witnesses, or to send for persons and papers, shall order the attendance of any witness, or the production of any paper as evidence, a summons shall be issued accordingly, signed by the said presiding officer or clerk of such house, or the chairman of said committee, directed to the sheriff or other proper officer of any county, or to the sergeant-at-arms of such house, or any person deputed by him. And when served, obedience thereto may be enforced, by attachment, fine or imprisonment, at the discretion of the house which appointed the committee; and if the committee be authorized to sit during the recess of the legislature or the recess of the house which appointed the committee, then obedience to the summons may be enforced by said

committee as aforesaid. And when a committee is appointed by each house under any joint or concurrent resolution, and directed to sit jointly, with authority to examine witnesses or send for persons and papers, the summons aforesaid may be signed by the chairman of the committee on the part of the senate or the chairman of the committee on the part of the house of delegates; and obedience thereto may be enforced as aforesaid by the house which appointed the committee, which directed the summons to be issued; and if such committees be authorized to sit during the recess of the legislature, then obedience to the summons aforesaid may be enforced as aforesaid by the committee which directed the summons to be issued."

The following is the resolution of February 24, 1905, appointing the committee:

"Mr. Seaman submitted the following:

Whereas, his excellency, Governor Albert B. White, in a written communication of this date, has requested the house of delegates to make an investigation of certain charges made against him, as set out in his said communication, therefore,

Resolved, That the speaker of this house be and he is hereby instructed to appoint a committee of three members of the house as such committee of investigation. Such committee will meet as soon as practicable and select one of its members chairman, and has leave to sit after the adjournment of the present session, and is hereby instructed to investigate fully and thoroughly the charges and matters as follows:

First. Whether Governor Albert B. White had or has any agreement, understanding or contract with any one, whereby the fees and emoluments of the office of secretary of state were to be divided or shared with him in any way, manner or form, either directly to himself or indirectly through any other person, firm or corporation; and whether Governor Albert B. White did ever in fact in any way, manner or form receive any of the fees or emoluments of the office of secretary of state.

Second. Whether Governor Albert B. White was concerned in any improper manner in the proposed reduction of the license tax on the charters of 'non-resident' domestic corporations.

Said committee is hereby empowered to compel the attendance of witnesses and to send for persons and papers, to appoint a sergeant-at-arms, necessary stenographers and clerks, and to employ such counsel, as may be necessary to conduct said investigation. Members of the committee shall receive the same compensation and mileage as are paid to members of the legislature. Such compensation and mileage and other expenses of the committee shall be paid by the auditor out of the appropriation for contingent expenses of the house of delegates on the certificate of the chairman of the committee.

On motion of Mr. Seaman, reference of the resolution to a committee was dispensed with, and it was taken up for immediate consideration, and adopted.

Thereupon, the speaker appointed as the committee provided for in the resolution, Mr. Seaman, Mr. Maxwell (of Harrison), and Mr. Preston."

## III.

The circuit court held that the chairman of the committee in issuing an order for Caldwell's arrest was a mere usurper, without any authority in law, but the court reached that conclusion only upon an examination of the Constitution of West Virginia. There is nothing in the Constitution of the United States on the subject. But the view that the chairman, although acting under color of authority of a statute of West Virginia, and of a resolution of its House of Delegates, was nevertheless a mere usurper without authority of law, and that Caldwell was deprived of his liberty "by a pretended writ of attachment and arrest issued by *another citizen* claiming to be Chairman of a Committee," as the Opinion puts it at page 21, adds nothing to the argument in favor of the jurisdiction of the circuit court. It is not alleged that the parties were citizens of different states. A circuit court of the United States has no jurisdiction to issue its writ of habeas corpus to release a citizen from imprisonment by "another citizen" of the same State, merely because the imprisonment is wrong-

ful. It must further appear that it is in violation of the Constitution or some law or treaty of the United States, or the law of nations.

## IV.

Whether the legislature of West Virginia, or the House of Delegates, acting either directly or through a committee, sitting during the session or in recess, had power under the Constitution of the State, to investigate the matters covered by the resolution of February 24th, or whether those matters were beyond the province of the legislature as defined and limited by the Constitution of the State, we consider wholly immaterial to the question of the right of the Federal Courts to interfere, which is the sole question before this court. The courts of the State are the appropriate tribunals for the vindication of the Constitution and laws of the State. In controversies between citizens of the same State, the function of the courts of the United States is limited to the protection of rights secured by the Constitution and laws of the United States, or by the law of nations. We do not wish however by silence to seem to assent to the view of the circuit court that the legislature of West Virginia was without authority, under the Constitution of the State, to investigate the matters covered by the resolution of the House of Delegates.

It must be borne in mind that the purpose of the legislature in ordering the investigation is not necessarily limited to the purpose of Governor White in requesting it, as disclosed in his communication to the House. He may have desired an investigation for his personal vindication. The House may have directed it with a view to further legislative action. Every presumption is in favor of the action of the House.

At the time the resolution was passed the term of A. B. White as Governor of the State was about to expire, and he

was to be succeeded by W. M. O. Dawson, who had been Secretary of State for four years. The people had shortly before amended the Constitution of the State by increasing the salary of the Governor from $2,700 to $5,000, and the salary of the Secretary of State from $1,000 to $4,000, and requiring all fees of the office of the latter to be paid into the state treasury. At a special session held in 1904 the legislature had made radical changes in the laws relative to the assessment and collection of taxes and licenses and had created new offices and modified the duties of various officials. The investigation ordered by the House did not relate to the conduct of private individuals, but to the acts of public officials concerning public matters in which the State was vitally interested, and may have been deemed important to enable the legislature to take action upon any one or all of the following subjects.

1. The conduct of public officials with a view to preventing the practices referred to in the resolution;

2. The prevention and punishment of bribery;

3. The fees of public officials;

4. The prevention and punishment of lobbying by public officials;

5. Enlarging within the Constitution the statute concerning impeachments;

6. The fees to be paid by non-resident or other corporations;

7. The revenues of the state.

In People ex rel. McDonald vs. Keeler, 99 N. Y. 463, the Senate of New York adopted a resolution directing a committee to investigate the department of public works in the city of New York, with power to send for persons and papers and to report the result of such investigation, and its recommendations concerning the same to the Senate. A preamble recited that charges of fraud and irregularities had been made against a commissioner of public works, and that it was

of vital importance to the tax payers of the State that the heads of all public departments should be above reproach. In declining to release a witness attached by the Senate for contempt for refusing to appear before it, the Court of Appeals held that the terms of the resolution indicated that some legislative action was in contemplation to guard against frauds or irregularities, if they were found to exist, which could be prevented or rendered more difficult by legislation, and that it was to be presumed that the investigation was for that purpose. The court said at page 485:

"Where public institutions under the control of the State are ordered to be investigated, it is generally with the view of some legislative action respecting them, and the same may be said in respect to public officers."

And again at page 487:

"We are bound to presume that the action of the legislative body was with a legitimate object, if it is capable of being so construed, and we have no right to assume that the contrary was intended. The same principle which renders it the duty of the courts to hold legislative action illegal when it unduly encroaches upon the province of the judiciary, forbids interference by the latter with the action of legislative bodies or the exercise of their discretion in matters within the range of their constitutional powers."

And again at page 481:

"The power of obtaining information for the purpose of framing laws to meet supposed or apprehended evils is one which has from time immemorial been deemed necessary and has been exercised by legislative bodies."

We respectfully submit that the order of the circuit court should be reversed and the cause remanded with directions to dismiss the proceeding for want of jurisdiction, and to restore the appellee to the custody of the sheriff.

William E. Chilton,
Lawrence Maxwell, Jr.,
Counsel for Appellant.